

# State of Colorado



Bill Owens  
Governor

## DPA

Department of Personnel  
& Administration

State Personnel Board  
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### Meeting Minutes January 20, 2004

The State Personnel Board met in public session on Tuesday, January 20, 2004, at the Colorado Department of Transportation, 4201 East Arkansas Avenue, Second Floor Auditorium, Denver, Colorado 80222.

The meeting was called to order by Chair Joyce Lottner at approximately 9:05 a.m. In addition to Ms. Lottner, Board member Elizabeth Salkind was present in person. The following Board member was present via telephone: Linda Siderius. Board Members Diedra Garcia and John Zakhem were absent.

First Assistant Attorney General Richard Forman, Board Counsel, and Jane Sprague, Acting Director, were also present.

### **I. REQUESTS FOR RESIDENCY WAIVERS**

#### **A. January 1, 2004 Report on Residency Waivers**

There was one request for a residency waiver this month that has not yet been acted upon. In addition, there is currently a special announcement on the Board's web site related to expiration dates for residency waivers.

### **II. PENDING MATTERS**

There were no pending matters before the Board this month.

### **III. REVIEW OF INITIAL DECISIONS OR OTHER FINAL ORDERS OF THE ADMINISTRATIVE LAW JUDGES OR THE DIRECTOR ON APPEAL TO THE STATE PERSONNEL BOARD**

There were no initial decisions or other final orders of the Administrative Law Judge or the Director for review on appeal to the Board this month.

#### **IV. REVIEW OF PRELIMINARY RECOMMENDATIONS OF THE ADMINISTRATIVE LAW JUDGES OR THE DIRECTOR TO GRANT OR DENY PETITIONS FOR HEARING**

- A. Patricia L. Brockman v. Department of Corrections, Youthful Offender System, State Personnel Board case number 2004B006.

Ms. Salkind moved to adopt the Preliminary Recommendation of the Administrative Law Judge and deny the petition for hearing. Ms. Siderius seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Salkind, Ms. Siderius, and Ms. Lottner. Ms. Garcia and Mr. Zakhem were absent.

- B. Steven Y. Kim v. Department of Regulatory Agencies, Office of Information Technology Services, State Personnel Board case number 2004G003.

Ms. Siderius moved to adopt the Preliminary Recommendation of the Administrative Law Judge and deny the petition for hearing. Ms. Salkind seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Salkind, Ms. Siderius, and Ms. Lottner. Ms. Garcia and Mr. Zakhem were absent.

- C. James Quintana v. Department of Corrections, Buena Vista Correctional Complex, State Personnel Board case number 2004G010.

Ms. Salkind moved to adopt the Preliminary Recommendation of the Administrative Law Judge and deny the petition for hearing. Ms. Siderius seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Salkind, Ms. Siderius, and Ms. Lottner. Ms. Garcia and Mr. Zakhem were absent.

#### **V. INITIAL DECISIONS OR OTHER FINAL ORDERS OF THE ADMINISTRATIVE LAW JUDGES OR THE DIRECTOR**

- A. Greg Bailey v. Department of Public Safety, Colorado State Patrol, State Personnel Board case number 2004B043.

On December 23, 2003, the Initial Decision of the Administrative Law Judge was issued. The ALJ found that Respondent's one-day suspension without pay of Complainant was not arbitrary, capricious or contrary to rule or law, and ordered that Respondent's action is affirmed and Complainant's appeal is dismissed with prejudice.

- B. Andrea Najar v. Department of Corrections, State Personnel Board case number 2004B009.

On January 7, 2004, the Initial Decision of the Administrative Law Judge was issued. The ALJ found that Complainant failed to demonstrate that DOC's offer of retention rights to Complainant following a layoff was arbitrary, capricious or contrary to rule or law and ordered that Respondent's action is affirmed and Respondent's motion for attorney fees and costs is denied.

## **VI. REVIEW OF THE MINUTES FROM THE DECEMBER 16, 2003 PUBLIC MEETING OF THE STATE PERSONNEL BOARD**

Ms. Siderius moved to approve the minutes of the December 16, 2003 meeting as submitted. Ms. Salkind seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Salkind, Ms. Siderius, and Ms. Lottner. Ms. Garcia and Mr. Zakhem were absent.

## **VII. ACKNOWLEDGMENTS**

### **DECISIONS OF THE STATE PERSONNEL BOARD MADE AT ITS DECEMBER 16, 2003 PUBLIC MEETING:**

- A. Gary Berlin v. Department of Natural Resources, Division of Wildlife, State Personnel Board case number 2004D001.

The Board voted to issue a declaratory order that the residency waiver that was issued in 2001 for this position is no longer in effect and requiring the agency to request a new residency waiver for this position, if the agency wishes to recruit out of state.

- B. Dan Wells and Barry Rice v. Department of Higher Education, University of Colorado at Denver, Auraria Media Center, Auraria Library and Auraria Higher Education Center, State Personnel Board case number 2002B092 (C).

The Board voted to adopt the findings of fact and Conclusions of Law 1,2 and 4, in the Initial Decision of the Administrative Law Judge, but to reverse the Administrative Law Judge on Conclusion of Law 3 (Respondent Auraria Higher Education Center's actions, with regards to Complainant Rice, were arbitrary, capricious or contrary to rule or law).

- C. Susan Downey v. Community Colleges in Colorado, Arapahoe Community College, State Personnel Board case number 2003B109

The Board voted to adopt the findings of fact and conclusions of law in the Initial Decision of the Administrative Law Judge and to adopt the Initial Decision.

- D. James Aragon v. Department of Corrections, Centennial Correctional Facility, State Personnel Board case number 2003B202.

The Board voted to adopt the Order Granting Motion to Dismiss Appeal with Prejudice.

- E. Freddie Montoya, Jr. v. Colorado State University, University of Southern Colorado, State Personnel Board case number 2003G133.

The Board voted to adopt the Preliminary Recommendation of the Administrative Law Judge and deny the petition for hearing.

- F. Tony Roso v. Department of Transportation, State Personnel Board case number 2004G004.

The Board reviewed the Preliminary Recommendation of the Administrative Law Judge, noting that in the petition for hearing, "the Complainant has the burden of demonstrating the existence of valid issues which merit a hearing by showing that there is an evidentiary and legal basis that would support a finding that the action was arbitrary, capricious or contrary to rule or law, and that the relief requested by the Complainant is within the Board's statutory authority." Board Rule R-8-49.

A motion was made and seconded to adopt the Preliminary Recommendation of the Administrative Law Judge and deny the petition for hearing. A majority of the Board did not find that there were valid issues in which merit a hearing. The petition for hearing is denied.

## **VIII. REPORT OF THE STATE PERSONNEL DIRECTOR**

### **IX. ADMINISTRATIVE MATTERS & COMMENTS**

#### **A. ADMINISTRATIVE MATTERS**

- Budget Report and Revenue and Expense Report
- Cases Scheduled for Preliminary Review
- Cases on Appeal to the Board and to Appellate Courts
- Mandate, Order Affirmed in Hay v. Department of Corrections, State Personnel Board Case number 2002G036, Court of Appeals No. 02CA1113
- Notice of Public Hearing to Consider Adoption of Permanent Administrative Procedures

In addition to the above matters, Acting Director Sprague distributed to the Board members copies of Stacy L. Worthington's January 13, 2004 letter to Ms. Sprague regarding Notice Pursuant to Rule 1.12(c) of the Rules of Professional Conduct.

Board Counsel Forman announced that the Court of Appeals had issued an unpublished opinion in Rura v. Department of Higher Education, State Board of Agriculture, Colorado State University, State Personnel Board case number 2001G117, affirming the Order of the Board. Mr. Forman will make sure that copies of the opinion are distributed to the Board.

Board Chair Lottner announced that there were five well-qualified candidates for Director and that Board staff uniformly appreciated being part of the interview and selection process, which was continuing.

B. GENERAL COMMENTS FROM ATTORNEYS, EMPLOYEE ORGANIZATIONS, PERSONNEL ADMINISTRATORS, AND THE PUBLIC

**X. EXECUTIVE SESSION**

A. Case Status Report

Following Executive Session, the Board went back into public session. Based upon the fact that the Legal Assistant II position has been reallocated to a General Professional (GP) III effective January 7, 2004, and the Board wishes to increase the salary of the position, Ms. Lottner made a motion to increase the salary of the GP III position to the maximum amount in the GP III range as soon as possible, retroactive to January 1, 2004. Ms. Salkind seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Salkind, Ms. Siderius, and Ms. Lottner. Ms. Garcia and Mr. Zakhem were absent.

Having no more business, the meeting adjourned by consensus.

**APPROVED THIS 17th DAY OF FEBRUARY, 2004.**

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Joyce Lottner, Chair

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Elizabeth Salkind, Member

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Linda Siderius, Member